IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2177 of 1999
with
Sp.Civil Applications No.2720, 2798, 2799, 2800, 2801, 2803, 2804, 3007 to 3013, 3158, 3205, 3207, 4052, 4053, 4054 and 5049 all of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy of the judgement? : Yes

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? No

PRABHATSANG DEVUBHA JADEJA

Versus

JAMNAGAR DISTRICT PANCHAYAT

Appearance:

MR AJ PATEL for MR TUSHAR MEHTA for Petitioners
MR PV HATHI for Respondent No. 1
Ms.Harsha Devani, A.G.P. for Respondent No. 3
(in all the matters)

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 08/10/1999

C.A.V. COMMON JUDGEMENT

1. These writ petitions involving common question of law and fact are proposed to be disposed of by common Judgment.

2. The factual controversy in these petitions is very much limited. In writ petition No.2720 of 1999 the petitioner moved an application to the Taluka Development Officer, Jamnagar on 10.3.1998 for grant of Non-Agricultural Permission of the land in dispute under Section 65 of the Bombay Land Revenue Code, which was rejected on 13.5.1999 (Annexure : B). In other petitions also Applications of those petitioners for grant of N.A. permission were rejected by identical orders though on different dates.

3. Learned Counsel Shri A.J.Patel for the petitioners and Ms.Harsha Devani, learned A.G.P. were heard. Counter Affidavit as well as Affidavit and other Annexures were examined.

4. There can be no dispute that the petitioners aforesaid applied for N.A. permission under Section 65 of the Bombay Land Revenue Code and those applications were rejected by the Competent Authority, namely, Town Development Officer on various dates shown in the annexure to the writ petition.

5. The first preliminary objection in this regard from the side of the State has been that alternative efficacious remedy by filing Revision under Sec.211 of the Bombay Land Revenue Code was available to the petitioners and since they have not availed of that remedy the writ petitions are not maintainable. I find substance in this preliminary objection. I do not find force in the contention that the order of rejection was passed under any of the provisions of the Gujarat Town Planning & Urban Development Act, 1975. If equally efficacious remedy by filing Appeal against the impugned orders was available to the petitioners and if they have not availed of such remedy the discretionary power under Article 226 of the Constitution of India in such circumstances cannot be exercised and need not be exercised. Thus, on this preliminary objection alone the above writ petitions are liable to be dismissed.

6. The next preliminary objection has been that the writ petitions have been filed after considerable delay. It is apparent from the imugned orders as well as the date on which the writ petitions were filed that some of the petitions have been filed after considerable delay.

In Sp.Civil Application No.2720 of 1999 N.A. Permission was rejected on 13.5.1998 whereas the writ petition was filed on 10.4.1999 i.e. after about 11 months of the order. This is certainly inordinate delay

in filing the writ petition.

In Sp.Civil Application No.2177 of 1999 the impugned order was passed on 7.1.1999 whereas the writ petition was filed on 26.3.1999, as such this petition cannot be said to have been filed after considerable delay.

In Sp.Civil Application No.2798/99 the impugned order was passed on 28.12.1998 whereas the writ petition was filed on 11.4.1999. This also cannot be said to be inordinate delay in filing the writ petition.

In Sp.Civil Application No.2799/99 the impugned order was passed on 10.12.1997 whereas the writ petition was filed on 12.4.1999 which is certainly inordinate delay and on ground of latches no relief can be granted in this petition.

In Sp.Civil Application No.2800/99 the impugned order was passed on 12.5.1998 whereas the petition was filed on 11.4.1999. Here also there is delay of about 11 months. This is also case of inordinate delay.

In Sp.Civil Application No.2801/99 the impugned order was passed on 11.7.1998 whereas the writ petition was filed on 11.4.1999. Here the delay is of about 9 months.

In Sp.Civil Application No.2803/99 the impugned order was passed on 24.4.1998 whereas the writ petition was filed on 8.4.1999. Here also more than 11 months have passed after the impugned order and the writ petition was filed after 11 months.

In Sp.Civil Application No.2804/99 the impugned order was passed on 11.7.1998 and the writ petition was filed on 8.4.1999. Here also there is delay of about 9 months.

In Sp.Civil Application No.3007/99 the impugned order was passed on 22.1.1999 whereas the petition was filed on 17.4.1999. Hence this petition does not suffer from vice of latches.

In Sp.Civil Application No.3008/99 the impugned order was passed on 22.1.1999 whereas the writ petition was filed on 17.4.1999. There is no delay in this writ petition.

In Sp.Civil Application No.3009/99 the impugned order was passed on 21.1.1999 whereas the writ petition was filed on 17.4.1999 and here also there was no inordinate delay.

In Sp.Civil Application No.3010/99 the impugned order was passed on 5.12.1998 whereas the writ petition was filed on 17.4.1999. In this case there was no significant delay in filing the petition.

In Sp.Civil Application No.3011/99 the impugned order was passed on 11.1.1999 and the writ petition was filed on 17.4.1999. There was no significant delay in

filing this petition.

In Sp.Civil Application No.3012/99 the impugned order was passed on 11.1.1999 whereas the writ petition was filed on 17.4.1999 hence there was no delay in this case.

In Sp.Civil Application No.3013/99 the impugned order was passed on 11.1.1999 and the writ petition was filed on 17.4.1999. Hence in this case also there was no delay.

In Sp.Civil Application No.3158/99 the impugned order was passed on 1.5.1998 and the petition was filed on 24.4.1999. There was thus about one years delay in filing the writ petition which is significant delay in filing the petition.

In Sp.Civil Application No.3205/99 the impugned order was passed on 13.11.1998 and the writ petition was filed on 27.4.1999. The delay of about five months cannot be said to be inordinate delay.

In Sp.Civil Application No.3207/99 the impugned order was passed on 10.3.1999. Hence the writ petition filed on 27.4.1999 cannot be said to be delayed.

In Sp.Civil Application No.4052/99 the impugned order was passed on 10.3.1999, hence the writ petition filed on 10.5.1999 cannot be said to be delayed.

In Sp.Civil Application No.4053/99 the impugned order was passed on 10.3.1999, hence the writ petition filed on 10.5.1999 cannot be said to be delayed.

In Sp.Civil Application No.4054/99 the impugned order was passed on 23.4.1997 (Annexure : B) whereas the writ petition was filed on 24.4.1999, which is certainly inordinate delay.

In Sp.Civil Application No.5049/99 the impugned order was passed on 14.6.1999, hence the writ petition filed on 12.7.1999 cannot be said to be delayed.

7. Thus, from the above data it is clear that some of the writ petitions were filed after inordinate delay, hence no relief can be given in those petitions, whereas in other petitions which are not delayed the matter has to be considered on merit.

8. The contention of the learned Counsel for the petitioner, however, has been that the orders rejecting the applications for N.A. permission are arbitrary and violative of Article 14 of the Constitution of India. It was argued that the main reason for rejection of applications for N.A. permission in the impugned orders has been the instruction received from the District Development Officer, Jamnagar to the effect that since the sub-regional plan is being prepared for Vadinar Sikka no permission for Non-Agricultural use is to be granted

if the villages are situated in this area. The list of villages included in this area show that about 55 villages were included in the area. According to the learned Counsel for the petitioner the administrative instructions could not be the ground for rejecting the application for N.A. permission. He aruged that neither under Bombay Land Revenue Code nor under the Gujarat Town Planning & Urban Development Act, 1975, there is any provision for rejection of application for N.A. permission on this ground. It was contended that under Sec.65 of the Bombay Land Revenue Code the application could be rejected on other ground, but not on the basis of executive instructions from the minutes of meeting contained in Annexure : C in which Chief Secretary and other Authorities were participants. The minutes of the meeting held on 21.2.1997 are contained in detail in Annexure : C. Learned Counsel contended that unless there is prohibition in Rules framed under the Bombay Land Revenue Code or under the Bombay Land Revenue Code, N.A. permission could not be refused on such executive instructions. According to him the executive instruction and the minutes of the meeting or notification cannot have force of a statute and as such on the basis of such guidelines the application could not be rejected. It was argued that even under the Gujarat Town Planning & Urban Development Act till the stage U/s. 26 is reached the application for N.A. permission could not be refused.

9. Regarding first contention I do not find any force in it. In Para : 3 of the Counter Affidavit of Shri A.G.Bhayani it is specifically mentioned that no application for N.A. permission in respect of lands situated in this area was sanctioned after 30.6.1997 and that no other person in the surrounding area has been permitted to develop his land. No rejoinder has been filed to this Counter Affidavit. Consequently it has to be believed that after 30.6.1997 no application for grant of N.A. permission was allowed and no N.A. permission was granted to any person in the surrounding area or in the area falling within 55 villages included in the development plan. Consequently it cannot be said that the petitioners have been discriminated against other persons. If Raja Lakhman was granted N.A. permission under order of this Court in Special Civil Application No.10463/98 it cannot be said that there was any discrimination or arbitrariness in the action of the respondents. In that case the facts were all-together different. The Minutes of the meeting of the Chief Secretary and others were there, but the learned A.G.P. in that case could not clarify whether the StateGovernment had set up Vadinar Area Development

Authority or not. Consequently it appears that in terms of orders dated 12.12.1998 and 5.3.1999 that the application of Raja Lakhman for grant of N.A. permission was considered and was allowed in favour of that petitioner whereupon the writ petition was withdrawn on 19.3.1999 (Annexure : F). As such the argument that the action of the respondent No.2 is arbitrary cannot be sustained.

10. So far as other contention is concerned the permission was not refused in persuance of notification dated 12.3.1999, Annexure : I to the Counter Affidavit of Shri S.Y.Bhatt, Deputy Secretary. On the other hand in some cases permission was refused even before this date. Moreover permission was not refused under the provisions of the Gujarat Town Planning & Urban Development Act rather it was refused under Section 65 of the Bombay Land Revenue Code. Of course while rejecting the permission the Competent Authority had in its mind the development plan as well as the Minutes of the meeting and directions given in persuance of those minutes contained in Annexure : C. For that reason alone it cannot be said that the permission was refused on the basis of executive instructions or notification or on the minutes of the meeting alone. Learned Counsel for the petitioner placed reliance upon the Apex Court's pronouncement in B.N.NAGARAJAN & ORS. V/S. STATEOF MYSORE & ORS., reported in A.I.R. 1966 SC 1942. This case is, however, not directly on the point under consideration before me. It was a case under Service matter and not a matter under Section 65 of the Bombay Land Revenue Code. Significantly one of the questions before the Apex Court was as to whether under the Act of Parliament or an Act of State Legislature the executives can not frame rules retrospectively unless the Act specifically empowers it to do so. Firstly this question is also not involved before me and secondly this question was not decided by the Apex Court in the aforesaid Judgment and the Apex Court decided to decide the matter on other grounds.

11. Shri A.J.Patel, learned Counsel contended that Para : 3 of the Minutes of the meeting contained in Annexure : C actually gave cause of action to the petitioners. In this para it is mentioned that pending finalisation of the Constitution of Vadinar Area Development Authority no N.A. permission should be granted by any Authority. Para : 5 of the Minutes were also brought to my notice so also Para : 6. In Para : 5 it is mentioned that the work relating to preparation of the map for the whole area is nearing completion. The

draft development plan will be prepared by utilising the services of consultant within a few months. Para : 6 of the minutes shows that the Chief Secretary pointed out that certain individual cases pertaining to this area should be attended to immediately. It was argued that this is arbitrariness in action of the executive inasmuch as it was pointed out that certain individual cases should be attended to immediately. However, it was simply pointed out by the Chief Secretary that certain individual cases should be attended immediately, but not that N.A. permission should be granted in those cases. Further, this suggestion of the Chief Secretary in the meeting was not communicated to the Competent Authority dealing with N.A. permission cases. Consequently the Competent Authority cannot be said to have been guided by Para : 6 of the minutes of the meeting.

12. Para : 3 of the minutes also cannot be said to be arbitrary since constitution of VADA was pending finalisation and from Para : 5 of the Minuites it appears that since the preparation of map for the whole area was nearing completion it was thought desirable in the larger interest and in the interest of planned development and to avoid haphazard development that the decisions taken in the aforesaid meeting were partly communicated to the competent Authority dealing with N.A. cases. As such there can be no real grievance against Paras : 3 & 6 of the Minutes of meeting.

13. Shri A.J.Patel placing reliance upon Section 9 of the Gujarat Town Planning & Urban Development Act contended that sub.Sec.1 empowers the Area Development Authority not later than three years of the declaration of such area as development area or within such time as the State Government may from time to time extend prepare and submit to the State Government a draft development plan for the whole or any part of the development area in accordance with the provisions of this Act and the development authority taking advantage of the later part of the provision may go on seeking extention of time for submission of development plan and this will certainly cause undue and unreasonable hardship to the petitioners. This apprehension also cannot be said to be well founded. Para : 5 of the Counter Affidavit of Shri S.Y.Bhatt shows that vide notification dated 12.3.1999 development area of Vadinar comprising of 55 villages has been constituted and a Chairman was also appointed. The proceeding for preparation of development plan and its implementation under various stages are in progress. Consequently the apprehension of undue delay in submitting the development plan cannot be considered to

be well-founded. Individual interest cannot be preferred over the larger interest. If under the development plan haphazard development is to be protected and the planned development is under contemplation N.A. permission under such circumstances could not be hurriedly granted.

14. Section 65 of the Bombay Land Revenue Code inter-alia does not provide on what ground permission can be granted or refused. Section 65(1)(b) provides that the Collector's permission is required and the Collector may after due inquiry either grant or refuse the permission applied for. This implies that the Collector can delegate his function to other authority and the delegated authority while dealing with application for grant of N.A. permission has to make due inquiry and then could grant or refuse to grant the permission applied for. Refusal to grant permission should not be arbitrary, but it should be based on some sound reasons. In these writ petitions it cannot be said that the refusal was arbitrary; rather refusal was keeping in view the larger public interest, namely, planned development of the area falling under the Vadinar Area Development Authority. This could be a valid reason for refusing to grant permission. In Para : 5 of the Counter Affidavit of Shri K.G. Bhayani it is deposed that in view of letter dated 30.6.1997 of District Development Officer that till finalisation of the Constitution of VADA no N.A. permission should be granted by any authority and that such direction was necessary to prevent haphazard development of the area and to ensure integral development of the whole area of 689 sq.mtrs. covering about 55 villages in the vicinity of V.A.D.A. It is further deposed that such decision was taken in the larger interest of the area as a whole and the said direction was operative only till the necessary authority was constituted under the Act. It was therefore not perpetual refusal to grant N.A. permission; rather refusal to grant N.A. permission till necessary authority was constituted under the Gujarat Town Planning & Urban Development Act. According to Para : 5 of the Affidavit of Shri S.Y.Bhatt the constitution of Area Development Authority has taken place and the Chairman has been appointed. If these two paras are read together it cannot be said and held that till the stage under Sec.26 of the Gujarat Town Planning & Urban Development Act is reached N.A. permission could not be refused. N.A. permission is neither granted nor refused under Section 26 of the Gujarat Town Planning & Urban Development Act rather it is granted under Section 65 of the Bombay Land Revenue Code. If keeping in view the departmental instructions and larger interest of the

public residing in the area as well as of the area N.A. permission was refused to avoid haphazard development of the area, the impugned order can neither be said to be illegal nor arbitrary. This reasoning also covers the third contention of Shri A.J.Patel that till the stage under Section 26 of the Gujarat Town Planning and Urban Development Act is reached N.A. permission could not be refused.

15. Shri A.J.Patel further contended that there is no statutory bar or prohibition in granting N.A. permission and even notification under Section 5 of the Gujarat Town Planning & Urban Development Act cannot operate as a bar for granting N.A. permission, hence the impugned orders are illegal.

16. It may be correct that there is no statutory bar in refusing to grant N.A. permission but the refusal was not under the Gujarat Town Planning & Urban Development Act. Section 65 of the Land Revenue Code empowers the Collector or his delegate firstly to make due inquiry and then to grant or refuse to grant permission applied for. Due inquiry under Section 65(1)(b) will also include inquiry whether the land for which N.A. permission is sought falls under any development plan or not. If in this process the competent Authority found as a result of inquiry that the land fell within the prohibited area falling under the VADA scheme it could have very well refused to grant permission. It was not a case of isolated lands rather land falling within the area of 55 villages covered under the scheme. Consequently this itself may be valid ground for refusal to grant the permission applied for.

17. In the result I do not find any illegality in the impugned orders. All the writ petitions are therefore devoid of merit and are liable to be dismissed.

The writ petitions are therefore dismissed with no order as to costs.

sd/-

Date : October 08, 1999 (D. C. Srivastava, J.)

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